



CALIFORNIA TRIBAL WATER SUMMIT 2009

Protect Our Sacred Water

BRIEF HIGHLIGHTS – DAY 1 DISCUSSIONS

(1) Welcome, Overview, and Opening Remarks

- Ron Goode, Chairman, North Fork Mono Tribe, welcomed Summit participants and emphasized that the Summit is just the first step, and California State agencies are here to learn from Tribes, discuss issues, and identify how they might work together in the future. Mr. Goode thanked the various supporters and contributors, without whom the Summit could not have happened.
- Summit Proceedings will be included in the California Water Plan Update 2009. All Summit materials are available online at the following address:
<http://www.waterplan.water.ca.gov/tribal2/ctws>
- Mark Cowin, Deputy Director, California Department of Water Resources, thanked participants for their time, and encouraged them to take advantage of the opportunity to exchange ideas and to set a standard for how Tribes and State agencies communicate. Mr. Cowin emphasized his eagerness to listen to the issues today, and to work together on the second day to identify next steps and begin working toward long-term solutions.
- Kamyar Guivetchi, Manager, Division of Statewide Integrated Water Management, DWR, welcomed participants and noted that the Summit is an opportunity to thoughtfully exchange ideas and begin to collaboratively resolve California's Tribal water issues. Mr. Guivetchi reiterated that Tribes are an essential partner in preserving and protecting ecosystems, and that the Communication Committee's 2008 Tribal Communication Plan provides the foundation for genuine Tribal participation and eventual establishment of permanent government-to-government relations.

(2) Rivers, Dams, and Fish Session

- Most of the water "fixes" in California have had negative impacts on Tribes, so it remains to be seen what this latest legislative "fix" will mean for Tribes
- Tribal people are here to protect the integrity of water
- The Trinity River is critical to ceremonies and traditions, yet has been diverted from the Hoopa Reservation
- The Klamath River Dam and Restoration Agreement raises at least two concerns: (1) the agreement is not based on sound fishery science, and (2) it includes a waiver of past and future water rights
- Shasta Dam has cut the salmon off from the river, forcing us to change our traditional practices
- Shasta Dam has also concentrated toxic mining sediments that affect everyone downstream after a storm; federal agencies should focus on removing the sediments, not raising the dam

- Tribes need to move beyond just talking to the U.S. Bureau of Indian Affairs, and begin to build relationships with the State agencies that implement restoration projects
- Tribes have lost their salmon and hence their food, and gotten diseases like diabetes in return
- The senior water rights of Native American Tribes will not be recognized without winning a law suit, and then you will only be put on a long list of beneficiaries of water supplies
 - Water rights go to senior water users; Tribes never relinquished their water rights
- The Central Valley Project intended that Tribes would benefit from the system, but today no Tribe has a contract with the U.S. Bureau of Reclamation – so where do Indian people fit?
- The current water deals (e.g., San Joaquin River Restoration Settlement Act) will allocate every drop of water in the State – so where will Tribes get their water from in the future?
- New dams do not create new water; they do not benefit Tribes or our fisheries, they promote development; if you want more water, you have to work with the watershed – the topic of the next session
- The dams and barriers that prevent salmon from returning upstream need to be removed
 - DWR is working with Tribes to identify ways to get fish around dams and divergences; Tribes should look for opportunities to partner with State agencies
- The Federal Energy Regulatory Commission will not go back on what it has licensed, and the energy utilities are not going to change their management style
- There need to be more avenues for Tribal voices to be heard in government processes
- The Tulare Basin Integrated Regional Water Management Planning process is breaking down agency and department silos – this is a good thing
- The dam in our area was built on a fault line, so now there is seepage that is degrading our artifacts and human remains; we are a non-federally recognized Tribe, so depend upon our neighboring Tribes to help us
- To protect our sacred waters and be sustainable we need to complete the circle of water and consider how it is used at every point along the way, because there are many different kinds of water – irrigation water, drinking water, greywater, and so forth
- The Endangered Species Act (ESA) has become a management standard – but this was never its intent; rather than working hard to delist these species, we are running them down to the lowest possible levels
 - When used as a management standard, the ESA supercedes and thus eliminates Native fishing rights
- Southern California Edison and Pacific Gas & Electric are raising their transmission poles to supposedly provide more “green energy” to replace hydropower, but in practice are doing this to provide both types
 - They have also applied for additional water rights, rather than explicitly saying they are raising their dams, because they know there would be an outcry
- A better system for accessing state water quality data is needed

- Individual allotments have “dry water” rights, which means people cannot farm or live on these lands because in practice there is no water; these allotments are ignored, because the government is only talking to communities
 - Some programs have provided septic tanks and water lines to allotments, but infrastructure and education are still severely lacking – families are living in “fourth world” conditions and in 2009 do not have dependable water sources
- The Los Angeles Department of Water and Power should be here today – they are taking our water from Northern California, and not taking responsibility for the associated impacts
- The issues we’re talking about also include and affect lakes

(3) Watersheds Session

- The Department of Conservation is implementing the CALFED Bay-Delta Watershed Project, which has had success in restoring creeks in the Delta watershed
- Having dependable water sources requires thinking at the watershed level
- Forests should be valued beyond goods and services – they constitute our land, water, animals, culture, and home
- *Written comment submitted:* We have to have a lesson. The word "manage" is OUT! The Native peoples of this land “lived on the land”, they did not survive from it. What does that mean? It means they prepared for 3-5 years and they thought in terms of 3-7 generations. So what they did today had to be good for their grandchildren's grandchildren. We do not manage, no one manages me, I manage no one. Creator gave all things life, with the same breath as he gave us. So therefore we all have the same spirit. This means the animals, plants, elements, rocks, grass, water etc. We live to care for the land and the land will take care of us. When Mother Earth is happy, we are happy. Food is plentiful for the animals, the animals and plants and herbs are healthy. When koch the pig is big and fat and the apple is big and fat and they look delicious over our fire, we are dancing and celebrating fruits of our harvest and giving thanks to our Father Creator and our Mother Earth. No one manages that.
- Clear-cut logging is a major concern today, as the forests cannot replenish the waters
- Watersheds are more than through-ways for water – their condition affects our entire environment
- State agencies do not examine the problems caused by diverting water until it’s too late
- Tribes are invited to contact Tito Cervantes of the Department of Water Resources (cervante@water.ca.gov or (530) 529-7389) who works with Tribes to create maps that reflect Tribal lands, hydrologic regions, and recharge areas for potable water
- Tribes should create Regional Watershed Management Plans to accurately document their needs, then work to integrate these with State plans
- State agencies and Tribes need to communicate more effectively – Tribes want meaningful dialogue with State leaders and want action, but continue to feel ignored and avoided while conditions continue to get worse

- Tribes should go to meetings and demand that their perspectives are included in policy development
- State agencies need to be educated about how Tribes live with water, for example
 - Cultural uses are not included in basin plans
 - Total Maximum Daily Load (TMDL) levels are set based on data that doesn't include fishing Tribes' lifestyle, for example in Clearlake and the Bay-Delta
 - Indian religious freedoms and sacred sites are not protected
 - The impacts of land development on Tribal communities are not acknowledged
 - State agencies do not understand how the history of California's indigenous communities and the conflicts they faced continue to shape their communities today
- Agencies need to enforce and uphold their own policies, for example, the protection of water quality as set out in Section 401 Certifications (based on the federal Clean Water Act)
- Federally un-recognized Tribes – un-reckoned with Tribes – must be included in State plans and dialogues with other Tribes
- Sustainability means thinking about the full circle of water – what is its source, how is it being used, what happens to it after it is used, and how does it return to the source
- Laws that threaten watersheds continue to be passed every year without Tribal input
- The California Water Plan Update needs to address the public domain allotment issue
 - The county or State doesn't always recognize Tribal jurisdiction, and reservations are left out of general plans
- The State works with watersheds on the local level, and fails to take into account where water originates and where water is delivered across regions; decisions being made hundreds of miles downstream in distant regions are impacting the sources of these waters and the surrounding Tribal lands
- State agencies should appoint specific senior individuals to represent Tribal interests and defend Tribal rights according to the trust responsibilities set out in the U.S. Constitution
- Tribes should involve and educate their young people and grassroots community members, and flex their political power by uniting behind a movement to protect and honor their rights
- Tribes should modify as necessary and then endorse the United Nations Declaration on the Rights of Indigenous Peoples, and then lobby and force the State and Federal government to do the same

(4) Luncheon Speaker: Tribal Water Rights in California and Tribal Water Rights Session:

- Tribal water rights are created by federal law, although tribes as land owners have water rights under State law as well

- Tribes with reservations are entitled to sufficient amounts of water, as calculated according to a U.S. Bureau of Indian Affairs standard, to meet the primary purpose of the reservation (most were created for agricultural purposes)
 - In a time of shortage, the “priority date” determines which water users are entitled to water; for Tribes this corresponds with the date the reservation was created
- Although federal Tribal water rights have remained favorable over time, the challenge is turning these laws into enforceable rights – this typically involves a legal battle that lasts decades
- Tribes must watch what’s happening in legal arenas – there have been proposals that would change the definition of Indian water rights and severely impact Tribes
- Tribes must define and document the purpose of their lands, because otherwise their water needs will be recorded as zero
 - Using science to define and document these purposes is becoming the standard and is critical to winning legal cases
 - If a purposes has not been identified, Tribes should have a mechanism to borrow water from surrounding lands
 - Tribes should consider not only their current land uses, but also their future land uses – 25 years ago the gaming industry did not exist, and now it is often a major water user on Tribal lands
- Tribes can assert their rights without quantifying it – the Eel River water system is an example
- Water is today’s gold, and Tribal people could be killed tomorrow just as they were over gold; yet we are people and we are families, and we have a right to water – nobody owns the water, not Tribes, not the State, not the federal government
- Tribes need to be informed, trained, and educated about water rights
- State agencies should provide funding to help Tribes adjudicate their water rights
- The State Water Resources Control Board has several staff in attendance, is obligated to consider Tribal interests because California Native Americans are also citizens of California, and is willing to answer questions and help with water rights inquiries
 - The Board does not initiate water rights adjudications, they have to be referred by a court to the Board, or someone can file to request an adjudication
 - Anyone can file for free a protest against a new water rights application
 - Anyone can file for free a complaint against an existing water user
- Groundwater is not regulated, but people are trying to claim it – do not allow this!
- To be sovereign and to be sustainable, Tribes must stand on their own – this is more important than making more treaties with agencies that have a poor track record of honoring them
 - If all Tribes asserted their water rights, this would change California water entirely

- New legislation will require the Water Boards (the State Water Resources Control Board plus the nine Regional Water Quality Control Boards) to assess water flow criteria and prioritize flow standards for rivers and streams – these processes could provide a new venue for Tribes to exercise and protect their water rights
- The definition of “public trust” has changed over time, and is no longer good for balancing needs for water and needs to protect ecosystems
- The greatest source of power for Tribes are their values and responsibilities – Tribes will be the ones who protect watersheds and endangered species in the future

(5) Institutions/Legal/Agency Session

- Should a State Office of Indian Affairs be created – what are the pros and cons? There would be a central office to advocate for Indian affairs, but it might also tempt other State agencies to assume Indian affairs are taken care of and they have no work responsibility
 - A State Office of Indian Affairs should be created at the cabinet level and provide a central place for Tribes to go for solutions and protect cultural lifeways
 - Rather than have isolated State agency Tribal liaisons or a single Office, a committee of State agency Tribal liaisons could be formed to coordinate State efforts and advise the administration
 - Governor Reagan created such an office, which succeeded in developing health, housing, education, and community service programs and the Native American Heritage Commission due to strong Tribal leadership
 - Although California is unique, Arizona and New Mexico have done good jobs of designing effective Offices of Indian Affairs
 - Such an office might duplicate what federal agencies already do – or worse!
 - Such an office must be well-funded and have the authority to oversee other State agencies’ work with Tribes and enforce State policies – including over cities and counties, which are not required to implement SB 18 (2004)
 - Within State agencies, such an Office would increase cultural and political competency and sensitivity, and greatly benefit the Governor and his/her constitutional officers
- State agencies need a standardized process and approach for working with Tribes, rather than each reinventing the wheel
 - An executive order should be issued that requires all agencies to work with Tribal governments
 - The Ocean is the same water; in the Marine Life Protection Act, the California Department of Fish and Game has made an explicit policy decision to NOT consult with Tribes
- What would a statewide consultation policy include, what would it look like?
 - It must involve a very specific, detailed, standardized approach

- Consultation is a Government-to-Government discussion, not a discussion with one councilmember or a cultural resource specialist
- Companies are NOT equivalent to governments, and Tribes should not accept companies that claim to stand-in for State agencies
- Such a policy must apply to all types of Tribes and Tribal communities – whether non-federally recognized, federally-recognized Tribes, landless Tribes, terminated Tribes, or allotment land Tribes
- Tribes with allotment lands are often ignored – yet their fractionated heirship is critical to protecting Tribal interests on these lands, and they can form organizations to represent themselves
- Consultation is not enough – sovereign nations require free, prior, and informed consent
 - That means Tribes must be partners in the development of any policy that affects them
- Tribes and their sovereignty are much more than casinos
- Indigenous peoples need to take back their rights as people and have organizations work directly with Tribal communities, instead of contracting out to private firms or having researchers speak for Tribes – Tribes are their own experts and speak for themselves
- Indigenous people make up 1% of the State’s population and own 20% of the State’s resources because they understand their relationship with the environment as stewards
- State agencies do not understand the meaning of “sovereignty” and must be educated
- The leadership and beliefs of traditional Tribal people are the greatest strength of Tribes
- Los Angeles stole the water from the Owens Valley to the great detriment of Tribal people, culture, family, relations, waterways, and lands
 - Building partnerships with State agencies and leveraging their resources provides an opportunity to address these issues
- There are major connections between emergency management and water management – flooding can lead to prolonged power outages and drinking water crises
 - Emergency management as it involves and affects Tribes must be included in the California Water Plan
- Tribal input in Integrated Regional Water Management Plans is often ignored – Tribes need to keep on fighting for inclusion, there are dozens of such plans being developed around the State
- There is a lack of information on how decisions impact Tribal resources
 - Tribes don’t have the same opportunities or resources to study impacts, so reference documents and underlying assumptions must be verified by Tribes
 - Impacts on Tribal resources needs to be an integral component of every plan, law, and California Environmental Quality Act (CEQA) review

- Cultural resources are a key negotiating platform for Tribes, and access to information and reports is your right
- Once the water goes, where do we go, what happens to our identity?

(6) Day 1 Closing Remarks

- Chris Peters, Seventh Generation Fund for Indian Development, closed Day One with a water story from his Tribe about the hungry water serpent on the Klamath River. After telling his water story, he explained Tribal traditions are alive and strong, and it is imperative to include Native input on planning processes such as the California Water Plan, as well as legislative deliberations.

Recurrent Themes from Day 1

- The need to improve communication
 - Tribal communication network
 - Between federal and State agencies for consistent Tribal policies
 - An information portal for State agencies working with Tribes
- The need for improved data and information, and its exchange
 - For example, overlays of Tribal boundaries with other Geographic Information Systems (GIS) data layers
- The need for coordination and consistency between State and federal policies on Tribal water rights
 - For example, considering Tribes as having “area of origin” rights
- The need to engage and include Tribes in Integrated Regional Water Management Planning efforts and other state grant programs
 - The need for State-Tribal contract language
 - The need for model bond language that explicitly includes Tribes
- The need for a State of California Tribal Consultation Policy
 - An Office of Indian Affairs – design, authority, and funding